

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

PJETER MARCO JUNCAJ,

Defendant-Appellant.

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UNPUBLISHED

June 28, 1996

No. 174057

LC No. 92-013151

Before: Neff, P.J., and Jansen and G.C. Steeh III,\* JJ.

PER CURIAM.

Following a jury trial in the Detroit Recorder's Court, defendant was convicted of felonious assault, MCL 750.82; MSA 28.277, and possession of a firearm during the commission of a felony, MCL 750.227b; MSA 28.424(2). He was thereafter sentenced to consecutive terms of two years' imprisonment for felony-firearm and two to four years for felonious assault. Defendant appeals by delayed leave granted. We affirm.

This case arises out of a shooting that occurred at a Coney Island restaurant in the City of Detroit. A dispute arose between defendant, the cashier at the restaurant, and the complainant, Nathaniel Jones, who was a customer. Jones testified that he ordered a ham and cheese sandwich and chili fries and handed defendant a five-dollar bill. Defendant then handed to Jones what Jones believed was not enough change. Jones requested more change or the sandwich. According to defendant, Jones ordered only chili fries and gave him two one-dollar bills. However, a customer who entered the restaurant after Jones testified that Jones ordered the sandwich and handed over a five-dollar bill.

An argument ensued between defendant and Jones and defendant told Jones to leave the restaurant. Jones refused to leave until he received the correct change or his sandwich. Two customers testified that Jones was crying, and that defendant reached under the counter and came out from behind the glassed-in area with a handgun. Defendant then grabbed Jones by the hood of his coat and pushed him toward the door. Defendant held the gun near Jones' head. One customer testified that as

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\* Circuit judge, sitting on the Court of Appeals by assignment.

defendant pushed Jones out of the door with the same hand in which he was holding the gun, the gun discharged. Defendant contended that the gun discharged accidentally when the door hit his elbow as he was trying to hold open the door and push Jones out. Jones suffered a gunshot wound to the head, behind his right ear.

Defendant raises four issues on appeal. He argues that he was denied the effective assistance of counsel at trial, that the trial court abused its discretion in failing to ensure that the interpreter would adequately and truthfully interpret for him, that he is entitled to a resentencing, and that he was denied the effective assistance of appellate counsel. We do not find any issue to require reversal.

Defendant first argues that he was denied the effective assistance of counsel at trial. He contends that counsel was suspended from the practice of law during part of the pretrial preparation, that counsel presented no defense, and that counsel completely conceded defendant's guilt. In order to prove a claim of ineffective assistance of counsel, a defendant must show that counsel's performance fell below an objective standard of reasonableness, and that the representation so prejudiced the defendant so as to deprive him of a fair trial. *People v Pickens*, 446 Mich 298, 309; 521 NW2d 797 (1994).

Defendant's claims are not supported by the record. First, defendant's trial counsel was suspended from the practice of law from May 1, 1993 to June 1, 1993. Counsel filed an appearance on June 25, 1993, and trial began on July 6, 1993. Accordingly, counsel was licensed to practice law when he represented defendant in this case.

Second, defendant argues that counsel was unprepared for trial because he did not investigate or interview any witnesses. The failure to interview witnesses does not, alone, establish inadequate preparation. *People v Caballero*, 184 Mich App 636, 642; 459 NW2d 80 (1990); see also *People v Johnson*, 451 Mich 115, 124; \_\_\_ NW2d \_\_\_ (1996) (the failure to call supporting witnesses does not inherently amount to ineffective assistance of counsel). The defendant must show that the failure to interview witnesses resulted in counsel's ignorance of valuable evidence which would have substantially benefited the defendant. *Caballero, supra*. Here, defendant has failed to indicate which witnesses counsel failed to interview and what those witnesses might have testified to. Therefore, defendant has failed to prove that he was prejudiced by counsel's failure to interview any witnesses.

Defendant also claims that counsel's performance was deficient because he completely conceded defendant's guilt at trial and failed to raise valid defenses. Counsel did not completely concede defendant's guilt. *People v Kryztopaniec*, 170 Mich App 588, 596; 429 NW2d 828 (1988). Defendant testified at trial that the gun discharged accidentally when the door hit his elbow. Counsel argued in closing argument to the jury that the shooting was an accident. Therefore, counsel presented a defense to the jury, and did not completely concede defendant's guilt.

Further, counsel's decision to pursue the accident defense solely, rather than request instructions on the lesser offense of reckless use of a firearm and the right to use reasonable force to expel a trespasser, was entirely consistent with defendant's own testimony at trial. Even if Jones, a customer,

could be construed to be a trespasser, defendant could only use *reasonable* force to expel him. “Defense counsel was faced with a choice between . . . defenses with significant evidentiary problems.” *People v LaVearn*, 448 Mich 207, 216; 528 NW2d 721 (1995). Counsel chose the defense (accident) that offered defendant the chance of a complete acquittal, rather than advance defenses that offered the possibility of a lesser conviction. *Id.* Counsel’s decision to pursue the accident defense was not deficient or below any objective standard of reasonableness.

Defendant also claims that counsel failed to request a jury instruction on accident. We do not find this to be ineffective assistance of counsel because this defense was adequately presented to the jury; defendant testified that the gun discharged accidentally when the door hit his elbow and counsel argued before the jury in closing that the shooting was accidental. *Pickens, supra*, p 331.

Accordingly, we conclude that defendant was not denied the effective assistance of counsel at trial.

Defendant next argues that the trial court abused its discretion in failing to ensure that the interpreter would adequately and truthfully interpret for him. We find no abuse of discretion.

Defendant, who immigrated to this country, stated that he spoke only a “little bit” of English. The interpreter, David LulgJuraj, who was chosen by defendant, stated that he had been acting as an interpreter in court for approximately thirteen years, and that he had interpreted in both criminal and civil cases. At his swearing in as a witness, LulgJuraj took an oath in which he swore to translate to the best of his abilities.

Further, the only inaccuracies that defendant alleges in the interpretation concern the fact that LulgJuraj stated that defendant had owned a restaurant at one time and that defendant had worked at four or five Coney Islands. In reality, defendant had never owned a restaurant and had been unable to maintain steady employment because of an eye injury and psychiatric problems. These facts bore no relationship to the case before the jury and would not have altered the jury’s verdict. There is no prejudicial error on the record before us.

Defendant next raises several sentencing issues. He first claims that the trial court erred in failing to give adequate reasons for exceeding the guidelines range of zero to twelve months. We find that the trial court adequately explained its reasons for departure on the record and on the SIR departure form. *People v Fleming*, 428 Mich 408, 428; 410 NW2d 266 (1987). The trial court noted the seriousness of the crime, the senselessness of defendant’s actions of bringing a gun into the situation, that defendant was “very, very modestly charged,” and that defendant acted deliberately and thoughtfully.

Defendant also claims that he is entitled to resentencing because the trial court failed to inform him that his sentences were consecutive rather than concurrent. The judgment of sentence clearly indicates that defendant’s sentences are consecutive and there is no requirement that a judge inform the defendant that his sentences are to run consecutively rather than concurrently. See MCR 6.425.

Defendant also argues that the trial court failed to give him credit for ninety-four days' served and gave him credit for only seventy days. The presentence investigation report and the judgment of sentence both state that defendant was to receive seventy days of sentence credit. Defendant did not object below that he was entitled to ninety-four days of credit, and, in fact, defense counsel agreed that defendant was entitled to seventy days of credit. Defendant has not shown that he was entitled to ninety-four days of credit and has otherwise waived this issue for review. MCR 6.429(C).

As his last issue, defendant claims that he was denied the effective assistance of appellate counsel. Defendant originally hired Carl Weideman to represent him from sentencing through appeal. Defendant now claims that Weideman was ineffective at sentencing for failing to object to the fact that defendant was given a sentence in excess of the sentencing guidelines, that defendant was not given credit for time served, and that defendant was not told that his sentences would run consecutively. Weideman's alleged failures at sentencing were not prejudicial to defendant because counsel need not object to the length of a sentence to preserve the issue for appellate review, defendant was properly given seventy days of credit, and the judgment of sentence indicated that defendant's sentences are to run consecutively.

Further, even if Weideman allowed the time for defendant's appeal as of right to run, defendant was not prejudiced because this Court granted defendant's application for delayed leave to appeal to permit defendant to raise his issues. Accordingly, we conclude that defendant was not denied the effective assistance of appellate counsel. *People v Hurst*, 205 Mich App 634, 641-642; 517 NW2d 858 (1994).

Affirmed.

/s/ Janet T. Neff  
/s/ Kathleen Jansen  
/s/ George C. Steeh III